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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE: SOCIAL MEDIA ADOLESCENT ADDICTION/PERSONAL INJURY PRODUCTS LIABILITY LITIGATION

This Document Relates To:

Tucson Unified School District v. Meta Platforms Inc., et al

MDL No. 3047

Case No. 4:24-cv-01382-YGR

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (TUCSON) (SD MSJ NO. 2)

Judge: Hon. Yvonne Gonzalez Rogers
Magistrate Judge: Hon. Peter H. Kang

Date: January 26, 2026
Time: 8:00 am

Place: Courtroom 1, Floor 4

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I. INTRODUCTION

Summary judgment should be granted because Tucson's Opposition fails at the most basic level: it identifies no evidence of a causal link between any of Defendants' actionable conduct and the District's alleged harms. Because it has no evidence of actionable conduct, Tucson attempts to support its claim with protected speech and third-party content, plainly ignoring this Court's ruling that Section 230 and the First Amendment impose a "significant limitation on plaintiffs' theories of recovery" by prohibiting the imposition of liability on this basis. Order on Motion to Dismiss School Districts' Master Complaint ("SD Order") (ECF No. 1267[1]) 2. Nor can Tucson survive summary judgment by relying on general allegations about students' cellphone and social media use to seek unconstrained funding to address Tucson's endemic economic and social challenges that exist independently of any of Defendants' actionable conduct. Tucson tries to get around this problem by invoking its failure to warn claim, but it fails to show that Defendants owed it any duty to warn or that any warning would have prevented those alleged harms.

Tucson's damages arguments are just as baseless. Tucson's claims for "lost time" are not permitted under Arizona law, it offers no admissible evidence identifying any compensable out-of-pocket damages, and it abandons its claim for property damage entirely. Finally, Tucson's forward-looking "strategic plan" fails to provide the reasonable certainty necessary to qualify as future damages and is an improper abatement remedy under Arizona law.

II. ARGUMENT

A. Defendants Are Entitled to Summary Judgment on Causation.

Defendants' Motion explained that, to avoid summary judgment, Tucson must present admissible evidence that Defendants' *actionable* conduct—as opposed to social media or cellphone use generally, third-party content or conduct, or Defendants' protected publishing activities—caused its alleged injuries. Tucson Mot. (ECF No. 2290) 14–24; *see also Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007) ("The evidence presented by the parties [on summary judgment] must be admissible."). Tucson has not even attempted to make that showing. Instead, Tucson raises

[1] The ECF numbers provided are from the MDL case docket (Case No. 4:22-md-03047-YGR).

a series of meritless arguments that cannot create a genuine dispute of material fact. As a result, summary judgment is appropriate. *See, e.g.*, *Grafitti-Valenzuela ex rel. Grafitti v. City of Phoenix*, 167 P.3d 711, 719 (Ariz. Ct. App. 2007) (affirming grant of summary judgment on causation); *State ex rel. Indus. Comm'n v. Standard Oil Co. of Cal.*, 414 P.2d 992,996 (Ariz. Ct. App. 1966) (same).

First, Tucson attempts to water down its burden on summary judgment by failing to apply the proper causation standards.

Second, Tucson cites evidence that fails to show any connection between Defendants' actionable conduct and the District's injury. Instead, Tucson relies on evidence of third-party content and protected publishing activity—which the Court already held cannot establish liability—and evidence of cellphone use or student mental health generally that has no connection to Defendants' actionable conduct, all of which is independently inadmissible for lack of foundation and hearsay.

Third, because Tucson has no evidence of Defendants' actionable conduct causing harm, Tucson argues that evidence related to Defendants' protected platform features is relevant to its failure to warn claim. But here too Tucson cannot meet its burden to show causation because it lacks evidence that Tucson would have acted in response to a warning and that Tucson's actions would have alleviated the alleged harm.

1. Tucson Fails to Apply the Proper Causation Standard.

Tucson concedes that it must establish proximate cause to survive summary judgment on its negligence claim. Tucson Opp. 2 (ECF No. 2369). While Tucson claims that it needs to show only that Defendants' conduct contributed "only a little" to its damages, *id.*, it ignores that this is the standard for "but for"—not proximate—cause. *See Grafitti-Valenzuela*, 167 P.3d at 717. Under Arizona law, "[a] defendant's acts are the proximate cause of a plaintiff's injury only if they are a substantial factor in bringing about the harm." *Id*. In any event, for the reasons explained in Defendants' motion and below, Tucson cannot show either "but for" or proximate cause.

Tucson inaccurately asserts that its public nuisance claim requires a showing of only an "unreasonable interference with a public right," not proximate cause. Tucson Opp. 2. That is incorrect. Arizona law is clear that causation is an element of a nuisance claim: "Under general tort law, liability for nuisance may be imposed upon one who sets in motion the forces which eventually

cause the tortious act," meaning that there must be a "showing of a *causal connection* between that [Defendant's] activity and harm to another." *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. in Ariz.*, 712 P.2d 914, 920 (Ariz. 1985) (emphasis added); *see also Bradford v. City of Tucson*, 573 P.3d 557, 562 (Ariz. Ct. App. 2025) (same); *Brown v. City of Phoenix*, 557 P.3d 321, 328 (Ariz. Ct. App. 2024) ("[C]ausation is an essential element of a public nuisance claim."); *Thienes v. City Center Exec. Plaza, LLC*, 2016 WL 5219858, at *13 (Ariz. Ct. App. Sep. 22, 2016) (nuisance claim required that defendant created condition that was a "substantial factor" in causing plaintiff's harm). The case Tucson cites makes clear that causation is an element of nuisance claims. *See* Tucson Opp. 2 (citing *Rollings v. City of Tucson*, 2007 WL 5556969, at *3 (Ariz. Ct. App. Dec. 24, 2007) (plaintiff required to show "that the City's water had invaded Rollings's property and *had caused Rollings damage*.")) (emphasis added).[2] Tucson thus cannot evade its burden to show that Defendants' actionable conduct caused its alleged harms.

2. Tucson Has No Competent Evidence It Was Harmed Because of Defendants' Actionable Conduct.

(a) Tucson Relies Solely on Evidence of Third-Party Wrongdoing and Protected Publishing Activities.

Tucson's claims fail because the evidence Tucson cites, Tucson Opp. 4–6, relies *solely* on examples involving protected features or content.

Online Bullying. Tucson cites testimony that disruptions at school occur because "students can create as many accounts as they want, they will come at a[nother] student by posting a meme or making fun of someone." Tucson Opp. Ex. 5 (ECF No. 2369-6) (Rubio Dep.) 88:3–6 (cited at Tucson Opp. 6). But Defendants cannot be held liable for harmful messages posted by third parties. *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008) ("Section 230 . . . immunizes providers of interactive computer services against liability arising from content created by third parties[.]"); Order Granting in Part and Denying in Part Defendants' Motions

[2] The other case cited by Tucson did not address causation but held that a city would have been permitted to ban "live sex act clubs" as public nuisances because they "would contribute to the spread of sexually transmitted diseases," *Mutschler v. City of Phoenix*, 129 P.3d 71, 77 (Ariz. Ct. App. 2006), so it is of no help to Tucson.

to Dismiss ("PI Order") (ECF No. 430) 16 (holding that that Section 230 bars any theory of liability that would "require defendants to publish less third-party content").

Creating and Viewing Harmful Content. Tucson argues that "Defendants' platforms promote and encourage students to engage in attention-seeking behavior, e.g., posting school threats and videos of fights." Tucson Opp. 4, n.2. Likewise, Tucson cites the testimony of Julie Shivanonda, Tucson's former Director of Social Emotional Learning and 30(b)(6) designee, to support its claim that social media "contributes to an 'increase of anxiety, depression [and] social isolation,'" *id.* 5, but Ms. Shivanonda testified that this purported increase was a "response to what [students are] seeing and what they're engaging [with] on social media"—in other words, a response to *content*. *See* Tucson Opp. Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 137:19–25; *see also id.* 72:19–73:16 (disciplinary issues related to social media are "due to students creating profiles and posting about fights"); *id.* Ex. 17 (ECF No. 2369-18) (June 30, 2025 Shivanonda Dep.) 15:4–16:16 (Tucson behavioral specialists "work around a multitude of [student] behaviors that are often *caused by social media content*") (emphasis added). Tucson also cites to the testimony of its Superintendent, Dr. Gabriel Trujillo, about school threats and "problematic images" being posted on social media. *Id.* Ex. 1 (ECF No. 2369-2) (Trujillo Dep.) 172:11–173:5 (cited at Tucson Opp. 6). As noted, Defendants cannot be liable for allegedly harmful content posted by third parties. *Roommates.Com, LLC*, 521 F.3d at 1162; PI Order 16.

Social Media Challenges. Tucson also cites testimony that students participated in social media challenges. Tucson Opp. 3 (citing Tucson Opp. Ex. 5 (ECF No. 2369-6) (Rubio Dep.) 134:2–19 (discussing "students destroying school property" "as part of" "TikTok challenges")). But the Court held that "alleged injury stemming from non-foreseeable third-party conduct cannot be attributable to defendants," and that Defendants cannot be liable for the "mere publication of . . . third-party content," absent evidence (which Tucson lacks) that Defendants engaged in "conduct like providing cash prizes to challenge participants." SD Order 25.

"Likes," "Comments," and "Streaks." Tucson cites testimony that administrators have allegedly observed students' "unhealthy" or compulsive" behavior tied to "likes," "streaks," "love," "reposts," and "reshares." Tucson Opp. 5–6 (citing Tucson Opp. Ex. 5 (ECF No. 2369-6) (Rubio

Dep.) 43:22–44:4, 44:17–45:13; *id.* Ex. 8 (ECF No. 2369-9) (Carrier Dep.) 108:10–109:13, 202:18–203:7; *id.* Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 135:9–136:3). But the Court expressly held that Plaintiffs' claims with respect to notifications relating to third-party content (*e.g.*, likes) are barred under Section 230, and with respect to Defendants' own content including rewards to users for engagement (*e.g.*, Streaks) are barred under the First Amendment. SD Order 14; PI Order 18 ("where notifications are made to alert users to third-party content, Section 230 bars plaintiffs' product defect claims . . . . This includes notifications that someone has commented on or liked a user's post"); *id.* 22 ("the timing and clustering of notifications *of defendants' content* to increase addictive use . . . is entitled to First Amendment protection. There is no dispute that the content of the notifications themselves, such as awards, are speech.") (emphasis in original).

Creating Videos During the School Day. Tucson also argues that students are tardy or truant because they are "creating their videos for their TikToks to upload." Tucson Opp. Ex. 5 (ECF No. 2369-6) (Rubio Dep.) 42:22–43:5. The Court has made clear that Section 230 protects Defendants' decisions to publish third-party content such as videos, and that they cannot be held liable for "[f]ailing to institute blocks to use during certain times of day (such as during school hours or late at night)." SD Order 14. Therefore, the District cannot hold any Defendant liable for failing to prevent students from creating and posting videos during school hours.

Body Dysmorphia. Tucson cites testimony from an administrator who claimed that filters can affect body dysmorphia. Tucson Opp. 6 (citing Tucson Opp. Ex. 8 (ECF No. 2369-9) (Carrier Dep.) 166:25–167:11). This testimony is insufficient for three reasons.

First, the testimony is inadmissible for lack of personal knowledge because the witness testified only to being "*aware of* times in the past where" other employees have run groups for young women focused on body dysmorphia. Tucson Opp. Ex. 8 (ECF No. 2369-9) (Carrier Dep.) 167:5–7 (emphasis added); *see Wicker v. Oregon ex rel. Bureau of Labor*, 543 F.3d 1168, 1178 (9th Cir. 2008) (declaration disregarded at summary judgment where declarant discussed "a meeting which they apparently did not attend and about which they had no personal knowledge").

Second, even if admissible, the testimony is based on alleged harms from third-party content and non-actionable features. The witness linked the alleged body dysmorphia to "bullying and

harassment." Tucson Opp. Ex. 8 (ECF No. 2369-9) (Carrier Dep.) 166:25–167:4. She also claimed that "young women" feel the "need[] to look like the people they see online that are provided to them through targeted ads." *Id.* 167:9–11. Both claims are barred by Section 230 and this Court's orders. *See* SD Order 14; PI Order 18.[3]

Third, this vague, general testimony is insufficient as evidence of Tucson's claims; it establishes nothing about the severity or volume of any issues related to body dysmorphia within the District allegedly caused by filters—let alone any evidence linking such issues to the filters offered by a particular Defendant's platform(s) or to financial expenditures by Tucson.[4] The witness admitted that she did not have any data to support her conclusion that body dysmorphia is caused by filters (though she claimed to be aware of what she called "correlation data"). Tucson Opp. Ex. 8 (ECF No. 2369-9) (Carrier Dep.) 168:15–20.

Parental Controls and Age Verification. Because Tucson lacks evidence connecting Defendants' actionable conduct to the alleged harm, it asserts—without citation—that all of "[t]hese problems are worsened by the absence of effective parental controls or age verification." Tucson Opp. 6. Such "bare assertions unsupported by evidence in the record . . . cannot survive summary judgment." *Safari Club Int'l v. Haaland*, 31 F.4th 1157, 1176–77 (9th Cir. 2022); *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) ("When the nonmoving party relies on its own affidavits to oppose summary judgment, it cannot rely on conclusory allegations unsupported by factual data to create an issue of material fact.").

[3] While the Court held that Plaintiffs could proceed on claims "that the filters are harmful regardless of whether children eventually post the images that they filtered" and "not labeling filtered content," *see* PI Order 22, this testimony alleges specifically that students were harmed by viewing content posted by others. *Lemmon v. Snap, Inc.*, 995 F.3d 1035 (9th Cir. 2021), held squarely that plaintiffs "would not be permitted under [Section 230] to fault Snap for publishing other Snapchat-user content," including filtered content. *Id.* at 1093 n.4. And this Court confirmed that Section 230 bars any theory of liability that would "require defendants to publish less third-party content." PI Order 16. Moreover, this testimony is not limited to filtered images and says nothing about how those images were labeled.

[4] Plaintiffs' general causation expert admitted that YouTube does not offer "their own appearance filter." Plaintiffs' Response to Defendants' Motion to Exclude General Causation Testimony of Plaintiffs' Experts, Ex. 24 (ECF No. 2405-27) (Christakis Dep.) 733:10–25.

(b) Tucson Lacks Evidence of Causation as to Any Defendant's Specific Platform.

Tucson lacks competent evidence establishing that Tucson students use any Defendant's specific platform(s) in a harmful manner. Tucson does not dispute that it lacks the categories of district-wide data identified in Defendants' motion, Tucson Mot. 21–22—*e.g.*, data regarding how frequently students use Defendants' platforms, the features they use, or the prevalence of any alleged resulting mental health harms. Tucson instead relies on evidence that it claims shows that (i) *cellphones* have caused discipline issues in schools, (ii) student mental health issues have increased; and (iii) student disciplinary issues have increased. Even if this evidence were admissible, it cannot carry Tucson's burden to establish that *each Defendant*—let alone any Defendant's actionable conduct—was a cause of Tucson's injury. *See Piner v. Super. Ct. in & for Cnty. of Maricopa*, 962 P.2d 909, 916 (Ariz. 1998) ("[T]he plaintiff has the burden of proving that the conduct of each defendant was a cause of the injury[.]")

Tucson Cannot Rely on General Evidence of Cellphone Use. Tucson cites evidence that administrators view *cellphone* use as a problem in Tucson, but that evidence shows no connection to Defendants' platforms or their actionable conduct. *See* Tucson Opp. Ex. 5 (ECF No. 2369-6 (Rubio Dep.) 128:23–129:3, 135:20–136:6; *id.* Ex. 6 (ECF No. 2369-7); *id.* Ex. 7 (ECF No. 2369-8) (communications with parents that discuss the "distraction" of cellphones but do not mention social media or Defendants' platforms)). Defendants' platforms represent just five of millions of applications available on cellphones; Tucson cannot show causation without evidence linking Tucson students' cellphone use to Defendants' platforms and then to expenditures by the District. Nor can Tucson cure this deficiency by citing anecdotal, inadmissible testimony that the majority of student cellphone use is linked to social media use broadly. Tucson Opp. 3–4 (citing Tucson Opp. Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 80:3–83:22, 150:22–151:18; *id.* Ex. 3 (ECF No. 2369-4) (May 13, 2025 Shivanonda Decl.) ¶¶ 3, 4; *id.* Ex. 5 (ECF No. 2369-6) (Rubio Dep.) 44:8–13, 86:13–24, 105:21–23). Even if the testimony were admissible, *see* Section II.A.2.(c), *infra*, anecdotal testimony from a handful of administrators cannot be generalized to tens of thousands of students during an eight-year period.

Tucson Cannot Rely on Lay Speculation That Social Media Harms Mental Health. Tucson cites Ms. Shivanonda's testimony that social media use is responsible for a purported increase in students' behavioral and social-emotional needs[5] and that certain features (which are protected by Section 230, *see supra* Section II.A.2.a) drive purported compulsive engagement,[6] but Ms. Shivanonda is a lay witness, not a licensed psychiatrist or adolescent psychologist. Tucson Opp. Ex. 2 (ECF No. 2369-3) (April 9, 2025 Shivanonda 30(b)(6) Dep.) 345:12–346:2; *see* Fed. R. Evid 701. So she "may not testify regarding a diagnosis, opinions, inferences or causation," or offer her opinion as to the features responsible for students' alleged compulsive use. *See Williams v. Steglinksi*, 2016 WL 1183134, at *1 (E.D. Cal. Mar. 28, 2016); *Lee v. City of Madera*, 2008 WL 5042856, at *4 (E.D. Cal. Nov. 20, 2008) ("[A] lay witness cannot offer testimony to establish a legal conclusion.").

Ms. Shivanonda's opinions are also inadmissible for speculation, lack of personal knowledge, and hearsay—Ms. Shivanonda admitted her testimony is based on anecdotal conversations with other Tucson staff, not any comprehensive analysis. *See* Tucson Opp. Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 101:21–102:21 (Tucson has never conducted an "explicit survey or an explicit analysis" of harms allegedly linked to social media); *id.* 119:7–121:2 (testifying that her opinions were based on "anecdotal conversations"); *Block v. City of L.A.*, 253 F.3d 410, 419 (9th Cir. 2001) (refusing to consider affidavit on summary judgment because it was "[n]ot made on personal knowledge" and relied on information from others). Ms. Shivanonda further admitted that Tucson does not maintain any data on student diagnoses or the causes of student mental health problems. Tucson Opp. Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 111:17–112:12 (stating that student diagnoses "[are] not necessarily trackable data"); *id.* 118:5–7 ("[W]e do not diagnose students with any disorders. We are not clinicians or medical staff."). And while she claimed that she saw an increase in "needs of students" "around 2015, 2016" from "personal

[5] Tucson Opp. 5 (citing Tucson Opp. Ex. 2 (ECF No. 2369-3) (April 9, 2025 Shivanonda 30 (b)(6) Dep.) 267:23–268:6, 353:24–354:15; *id.* Ex. 3 (ECF No. 2369-4) (May 13, 2025 Shivanonda Decl.) ¶ 9; *id.* Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 66:11–67:9, 72:12–17, 73:4–16, 136:13–137:25)).

[6] Tucson Opp. 6 (citing Tucson Opp. Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 135:9–136:3 (discussing "the likes and the love and the repost and the reshares")).

experience," that experience was limited to her work in one middle school in 2016. *Id.* 67:2–9. Observations by one person in one middle school for one year cannot establish causation for the entirety of Tucson's claims.

Nor do Tucson's experts fill this gap. While Plaintiffs have presented general causation expert testimony on the mental health problems caused by "social media" generally, Tucson has not presented any expert testimony regarding the causes of mental health problems in Tucson specifically. *See In re Silicone Gel Breast Implants Prods. Liab. Litig.*, 318 F. Supp. 2d 879, 922 (C.D. Cal. 2004) (granting summary judgment where plaintiff failed to offer admissible expert testimony of specific causation); *Nelson v. Matrixx Initiatives*, 2012 WL 3627399, at *13 (N.D. Cal. Aug. 21, 2012), *aff'd*, 592 F. App'x 591 (9th Cir. 2015) ("Even assuming there is a triable issue on general causation, this does not create a genuine issue on specific causation. This is because there is a difference between determining whether scientific evidence supports an inference that the alleged exposure is capable of causing the type of injury in humans versus whether it was the most likely cause of the alleged injury in plaintiff.").

Testimony about student mental health also cannot create a genuine dispute of material fact on causation because it attempts to hold Defendants liable for non-actionable conduct. *See* Defendants' Omnibus Reply ("Omnibus Reply") Section II.A.2. For instance, Tucson cites Superintendent Gabriel Trujillo's testimony that social media use is "pervasive," Tucson Opp. 3 (citing Tucson Opp. Ex. 1 (ECF No. 2369-2) (Trujillo Dep.) 188:3–21), but this testimony relied on conduct the Court held cannot create liability, *id.* 186:10–186:25, 188:3–189:10 (referencing "online harassment and bullying," "videos, images and comments," and "memes," as "the major factors that we deal with as it pertains to the pervasive usage of these platforms by students," and discussing students "making comments about students' weights, students' looks, students' appearance" on social media as a "highly prevalent problem"). *See* PI Order 16. Allowing Tucson to rely on this testimony to avoid summary judgment would be an end-run around the Court's order.

Tucson Cannot Rely on Evidence of Disciplinary Violations. Tucson's claim that Defendants' platforms are responsible for a purported increase in student disciplinary issues is unsupported by record evidence. Tucson Opp. 4. Tucson points to an increase in the number of

disciplinary violations relating to "Improper Use of Technology," but it is undisputed that this category includes a "wide variety of discipline actions" *not* having to do with social media or even cellphones, such as student possession of gaming systems, copyright infringement, vandalism of school computers, or downloading malware to school computers. Tucson Opp. Ex. 14 (ECF No. 2369-15) (Schwartz-Warmbrand Dep.) 69:20–70:14; *id.* Ex. 2 (ECF No. 2369-3) (April 9, 2025 Shivanonda 30(b)(6) Dep.) 220:25–222:21. Tucson also points to a purported increase in the overall number of disciplinary violations, Tucson Opp. 4, but has no admissible evidence that any increase is driven by Defendants' platforms. Tucson's Superintendent and Director of Student Relations both testified that Tucson has never analyzed how many disciplinary violations involve social media or cellphones. Tucson Opp. Ex. 1 (ECF No. 2369-2) (Trujillo Dep.) 201:10–202:5; *id.* Ex. 14 (ECF No. 2369-15) (Schwartz-Warmbrand Dep.) 48:25–50:7, 71:12–72:16.

(c) Tucson Lacks Admissible Evidence of Causation.

The evidence cited in Tucson's Opposition cannot create a genuine dispute for the independent reason that it is inadmissible. *See* Tucson Mot. 23, 29; Fed R. Civ. P. 56(c)(2); *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 733 (9th Cir. 2002) ("A trial court can only consider admissible evidence in ruling on a motion for summary judgment.").[7]

Tucson repeatedly attempts to prove causation with inadmissible testimony based on "anecdotal data" or "conversations" with unidentified third parties. Tucson Opp. 2–6. For instance, Tucson cites Ms. Shivanonda's testimony that cellphone use is "pervasive" and that social media is responsible for the majority of Tucson's disciplinary incidents. *Id.* 3–5 (citing Tucson Opp. Ex. 2 (ECF No. 2369-3) (April 9, 2025 Shivanonda Dep.) 228:21–25; *id.* Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 46:23–47:25, 48:25–49:3, 79:14–80:2)). But Ms. Shivanonda testified that her understanding was based on anecdotal conversations. *Id.* Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 49:10–19 ("[A]necdotally, as we talk with administrators

[7] Tucson does not respond to this argument in its Opposition and so has waived any response. *See Alexopulos ex rel Alexopulos v. Riles*, 784 F.2d 1408, 1410–11 (9th Cir. 1986) (tolling argument waived because the appellants failed to raise it in opposition to summary judgment); *Reliance Ins. Co. v. Doctors Co.*, 299 F.Supp.2d 1131, 1154 (D. Haw. 2003) ("Failure to raise issues in opposition to summary judgment functions as a waiver" of the argument. (citation omitted)).

. . . through those conversations we can see that that kind of through line is generally connected with social media in some way."); *id.* 79:14–80:2 ("anecdotal data" about how often students use cellphones is based on "conversations" between Ms. Shivanonda and "counselors" who "talk with teachers"). Tucson likewise cites testimony that during revisions to the code of conduct, students reported frequently using cellphones and social media, but Ms. Shivanonda admitted her knowledge of these "conversations" with students was "secondhand." *Id.* 83:11–22; *see also id.* 80:7–18.[8] This testimony is plainly inadmissible for lack of personal knowledge and hearsay. *See* Fed. R. Evid. 602, 801–802. Tucson has not offered any evidence from any of the individuals with whom Ms. Shivanonda conversed—let alone evidence that the incidents discussed concerned Defendants' platforms or, if so, what features of Defendants' platforms.

Likewise, Tucson cannot rely on the testimony of Superintendent Trujillo, Regional Assistant Superintendent Brian Lambert, and Tucson High School Dean of Students Clarinda Rubio. All three admitted their testimony was based on anecdotes or conversations with unidentified third parties. Tucson Opp. Ex. 1 (ECF No. 2369-2) (Trujillo Dep.) 168:19–170:2 (citing "anecdotal data" and admitting that District conducted no formal surveys or analysis); *id.* Ex. 5 (ECF No. 2369-6) (Rubio Dep.) 86:13–24 (citing Ms. Rubio's conversations with other unidentified employees about student technology use); *id.* 128:23–129:3 (referring to conversations about cellphone confiscation); *id.* Ex. 13 (ECF No. 2369-14) (May 14, 2025 Lambert Dep.) 142:6–22 (citing "anecdotal conversations" from "talking with students and families").

This type of anecdotal, unsupported, and self-serving testimony should be disregarded as inadmissible hearsay lacking personal knowledge. *See* Fed. R. Evid. 602, 801–802; *Block*, 253 F.3d at 419 (testimony inadmissible at summary judgment where declarant "was not personally involved in any of the disciplinary suspensions, . . . did not personally review any business records containing information regarding such disciplinary suspensions" and "instead relied on information from

[8] In any event, the witness with responsibility for revisions to the Tucson code of conduct, Tucson's Director of Student Relations, testified that the feedback received regarding cellphones was not sufficient to warrant changing the code of conduct. Tucson Opp. Ex. 14 (ECF No. 2369-15) (Schwartz-Warmbrand Dep.) 151:1–153:6.

(unsworn) departmental personnel officers, and the source of these officers' information is unclear"); *United States v. Dibble*, 429 F.2d 598, 601–02 (9th Cir. 1970) (summary judgment cannot be predicated on affidavits that do not "show affirmatively that the affiant is competent to testify to the matters stated therein").

3. Tucson's Failure to Warn Arguments Cannot Save its Claims from Dismissal on Causation Grounds.

Even if Defendants had a duty to warn Tucson (they do not, *see infra* Section II.B), Tucson likewise lacks admissible evidence that any failure to warn caused its alleged harm. *See* Tucson Mot. 46–47.[9] To defeat summary judgment, Tucson must show that (1) Tucson would have taken precautions in response to a warning and (2) Tucson's response would have avoided its injuries. *See Golonka*, 65 P.3d at 965–66 ("To prove causation, Plaintiffs were required to present evidence that if GM had issued a proper warning, Mrs. Golonka would have taken precautions to avoid the accident."); *Mills v. Bristol-Myers Squibb Co.*, 2011 WL 4708850, at *3 (D. Ariz. Oct. 7, 2011) ("For plaintiff to establish proximate cause on her failure to warn claim, she needs to show that had a proper warning been given, the injury would not have happened."). Tucson cannot offer evidence on either point.

Tucson Cannot Show It Would Have Responded to a Warning. Tucson argues that it would have acted in response to a warning because it previously placed limits on student cellphone use, Tucson Opp. 13–14, but that necessarily means the alleged failure to warn cannot be the proximate cause of any inaction by Tucson. *See Raschke v. Carrier Corp.*, 703 P.2d 556, 559 (Ariz. Ct. App. 1985) (failure to warn was not proximate cause of injury where plaintiff had already taken action they purportedly would have taken in response to warning). Nor can Tucson claim that it would have enacted even stricter cell phone bans if it received an adequate warning. Even after it allegedly became "aware of the harms caused by Defendants' platforms," Tucson Opp. 14, Tucson did not revise its cellphone policy until just a few months ago—years after filing this litigation—and

[9] Tucson does not argue that a "heeding presumption" applies and so has forfeited any argument to the contrary; and, in any event, Arizona recognizes the presumption only "in a strict liability information defect case" not applicable here. *See, e.g.*, *Golonka v. Gen. Motors Corp.*, 65 P.3d 956, 967 (Ariz. Ct. App. 2003).

it did so only because a new Arizona law required school districts to limit student cellphone use. Reply Ex. 1 (September 16, 2025 Tucson Cellphone Policy); Tucson Opp. Ex. 1 (ECF No. 2369-2) (Trujillo Dep.) 328:8–330:11. But, even after these revisions, Tucson *still allows* high school students to use cell phones during lunch and allows all students to use cellphones on campuses before or after school, for educational purposes, or on trips outside school (if approved by a teacher or coach). Reply Ex. 1 (September 16, 2025 Tucson Cellphone Policy). And the new policy does not prohibit students from using social media on their cellphones while at school. *Id.* Further, Tucson contends that "an outright ban" is "impractical," that its ability to enforce restrictions are limited by parental concerns, and that it has "no means to dictate" what students access on their personal devices. Tucson Opp. 14 & n.9. Thus, by Tucson's own account, it lacked the ability to enact further changes even if it had received a warning.

Nor can Tucson rely on a newly minted declaration to create a triable issue. *See* Tucson Opp. 14 (citing Tucson Opp. Ex. 31 (ECF No. 2369-32) (November 1, 2025 Shivanonda Decl.)). In her new declaration submitted with the Opposition, Ms. Shivanonda claims that if Defendants had provided "adequate, evidence-informed warnings" (a term Ms. Shivanonda does not define), then Tucson would "have implemented additional preventive programming and early intervention measures." Tucson Opp. Ex. 31 (ECF No. 2369-32) (November 1, 2025 Shivanonda Decl.) ¶¶ 4, 9. Ms. Shivanonda never explains what information the warning should have included, where the warning should have been located, or who would have read the warning. Nor does Ms. Shivanonda explain what information Tucson would have received from this warning that it did not already possess.

And critically, Ms. Shivanonda's declaration cannot create a dispute of material fact as to what Tucson would have done in the face of an adequate warning because, after years of litigation, Tucson has *not actually taken any of these actions*. *See Shetter v. Rochelle*, 411 P.2d 45, 46 (Ariz. Ct. App. 1966) (ordering directed verdict for defendant for lack "of reliance by the plaintiff on any failure to warn"). Indeed, Ms. Shivanonda testified that Tucson identified the problems of social media as early as 2015. Tucson Opp. Ex. 17 (ECF No. 2369-18) (June 30, 2025 Shivanonda Dep.) 46:17–22. Yet, during the last 10 years, it has not done the things she self-servingly says Tucson

"could and would have" done, despite purportedly knowing about the alleged harms of Defendants' platforms and the attendant rise in student mental health issues. *Id.* Ex. 31 (ECF No. 2369-32) (November 1, 2025 Shivanonda Decl.) ¶ 6. To the contrary, Tucson allows students to access YouTube on school devices and networks, *id.* Ex. 2 (ECF No. 2369-3) (April 9, 2024 Shivanonda 30(b)(6) Dep.) 378:11–20, 380:22–25, 386:13–15, and uses YouTube to share videos with "students, staff, [and] parents," *id.* 385:2–7. Further, Tucson regularly engages with its students and families through social media. *See id.* Ex. 8 (ECF No. 2369-9) (Carrier Dep.) 150:3–151:7 (Tucson engages with its students on social media); *id.* Ex. 1 (ECF No. 2369-2) (Trujillo Dep.) 306:15-307:11 (Tucson and individual schools within Tucson use Facebook, Instagram, and YouTube to communicate with parents and students); *id.* 312:14–313:17 (agreeing that social media can be an incredible instructional tool); *id.* Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 180:5–186:6 (Tucson uses Facebook, Instagram, and YouTube to communicate with students and families).

In short, Ms. Shivanonda's claim that Tucson would have acted in response to an unspecified, hypothetical warning is speculative and cannot create a genuine dispute of material fact. *See Grafitti-Valenzuela*, 167 P.3d at 718–19 (opinion that additional precautions would have prevented plaintiff's harm did not create a genuine issue of fact on causation because "there [was] no basis in the facts" supporting this conclusion, so it was "nothing more than speculation"); *Badia v. City of Casa Grande*, 988 P.2d 134, 142 (Ariz. Ct. App. 1999) ("Sheer speculation is insufficient to establish the necessary element of proximate cause or to defeat summary judgment.").

Tucson Has No Evidence that a Warning Would Have Prevented the Alleged Harm. Even if Tucson could show that it would have acted in response to a warning, Tucson cannot show that the warning would have reduced its injuries. Tucson has presented no evidence that any additional cell phone restrictions Tucson could have implemented would have affected student mental health or Tucson's expenses. And Ms. Shivanonda does not claim—and would have no basis to claim—that any other additional measures implemented by Tucson would have caused a single student in Tucson to use Defendants' platforms less or experience fewer mental health harms. She likewise has no basis to make the much larger leap that any additional measures taken by Tucson would have sufficiently improved student mental health such that Tucson would have expended

fewer financial resources to address the alleged impact of students' use of Defendants' platforms.

B. Defendants Have No Duty to Warn Under Arizona Law.

Summary judgment is also warranted on Tucson's failure to warn claim for the separate reason that Tucson has not established that Defendants have a duty to warn. Tucson does not identify any Arizona authority supporting its novel claim that Defendants owed a duty to warn the District or separately that Defendants owed a duty to warn the District's students and parents running to and enforceable in tort by the District.

"[D]uty is not presumed; in every negligence case, the plaintiff bears the burden of proving the existence of a duty." *Quiroz v. ALCOA Inc.*, 416 P.3d 824, 827 (Ariz. 2018). Tucson asserts that "a duty to warn arises when a defendant's conduct creates a foreseeable risk of harm to others," Plaintiffs' Omnibus Opposition ("Om. Opp.") (ECF No. 2414-1) 5, but Arizona courts expressly "remov[ed] foreseeability from [its] duty framework," "limiting the duty analysis to special relationships and public policy." *Quiroz*, 416 P.3d at 829; *see also Dinsmoor v. City of Phoenix*, 492 P.3d 313, 316 (Ariz. 2021) ("Duties are based on [either] 'special relationships' or on [ ] public policy."). Neither the Omnibus Opposition nor Tucson's individual Opposition identifies a single Arizona case recognizing this kind of duty.

Tucson does not even argue that Defendants owed a duty to warn the District based on any special relationship or public policy, as required under Arizona law. Nor could it: "A duty based on a special relationship requires a preexisting, recognized relationship between the parties," and Tucson cannot identify any such relationship between itself and Defendants. *Cal-Am Props. Inc. v. Edais Eng'g Inc.*, 509 P.3d 386, 390 (Ariz. 2022) (citing *Quiroz*, 416 P.3d at 829). Nor does Tucson point to any state statutes covering the harms it alleges here, which is "the primary source of duties based on public policy." *Id.*; *see also CVS Pharmacy Inc. v. Bostwick in and for Cnty. of Pima*, 494 P.3d 572, 578 (Ariz. 2021) (requiring duties be "clearly expressed [in] public policy").

Moreover, Arizona courts have consistently refused to extend a duty to warn beyond direct users of products or services. *E.g.*, *Quiroz*, 416 P.3d at 829 (plaintiff could not assert failure to warn claim based on defendant's alleged contamination of plaintiff's father with asbestos); *Conklin v. Medtronic, Inc.*, 431 P.3d 571, 577 (Ariz. 2018) (holding state law doctrine "does not permit (or

require) a manufacturer to warn any and all third parties" of potential dangers of their products); *Harris v. Medtronic Inc.*, 2023 WL 2478913, at *2 (D. Ariz. Mar. 13, 2023) ("Arizona law does not recognize a duty to warn a third party such as the FDA" of "alleged deviations and defects" in drugs (citation modified)). Arizona courts have likewise barred plaintiffs from bringing suit based on alleged failures to warn third parties, precluding Tucson's claims based on alleged failures to warn students or parents. *See* Tucson Mot. 48–49; *Quiroz*, 416 P.3d at 827 (plaintiff could not bring suit for defendant's alleged failure to warn plaintiff's father "about the dangers of secondary asbestos exposure," regardless of whether harm to plaintiff was foreseeable).

Not only are Tucson's claims out of step with Arizona law—they make no sense even under the Districts' own cited cases. In the Districts' cited cases from other states, Om. Opp. 6–7, a warning might have allowed the plaintiff to directly avoid the alleged harm. *See, e.g., Dozier Crane & Mach., Inc. v. Gibson*, 644 S.E.2d 333, 336–3337 (Ga. App. 2007) (construction worker plaintiffs could have avoided being electrocuted had there been a sticker on the crane warning of that risk). By contrast, here, Tucson primarily claims that a warning would have allowed them to provide increased education and wellness programs to encourage "healthy and balanced technology use" and avoid "problematic use patterns"—in other words, provide more warnings to students, parents, and teachers. Tucson Opp. Ex. 31 (ECF No. 2369-32) (November 1, 2025 Shivanonda Decl.). The Districts cite no cases, and Defendants are aware of none, that hold that a duty to warn exists in such a four-step process—*i.e.*, (1) there is a duty to warn a non-user plaintiff of potential harms to users (2) so that the plaintiff can then provide more warnings to users (3) in the hopes that the users take steps to reduce their own injuries, (4) which theoretically could (but might not) then reduce any downstream financial damage to the plaintiff.

C. Tucson Cannot Recover Past Damages.

1. Arizona Law Precludes Tucson from Recovering "Lost Time" Damages.

Tucson fails to show that it can recover damages for its "general allegations of lost time," which "are not cognizable injuries" under Arizona law. *Griffey v. Magellan Health Inc.*, 562 F. Supp. 3d 34, 45–46 (D. Ariz. 2021) (citation modified); *see also Feathers v. On Q Financial LLC*, 2025 WL 1769764, at *13 (D. Ariz. June 26, 2025) ("Plaintiffs' claimed damages for lost time and

opportunity costs is insufficient to state the damages elements of a negligence claim."). Tucson concedes that Defendants' platforms have not caused Tucson to hire additional staff or spend extra money on employee salaries or benefits. *See* Tucson Opp. 12; Tucson Mot. Ex. 55 (ECF No. 17-57) (Ward Dep.) 165:21–166:22, 168:1–15 (Plaintiffs' damages expert agreeing Defendants' platforms did not increase Tucson's personnel costs). Rather, Tucson used unverified survey responses and employee affidavits to claim that a percentage of employee wages and benefits were "lost" via time spent on social media. Tucson Mot. 27.

Tucson's cited cases do not establish any entitlement to these "lost time" damages based on a percentage of employee wages and benefits. In *PivotHealth Holdings LLC v. Horton*, 2025 WL 1865788 (D. Ariz. July 7, 2025), the court found that the plaintiff sufficiently alleged injury-in-fact because "it suffered damages including 'employee time, costs, and legal fees' incurred in responding to and defending against" a wrongful lawsuit. *Id.* at *2. The court did not otherwise address the "employee time" allegation. And in *IceMOS Tech. Corp. v. Omron Corp.*, 2020 WL 1083817 (D. Ariz. Mar. 6, 2020), the court found only that the defendant had notice of the plaintiff's alleged damages; it did not address whether any of those claimed damages were compensable. *Id.* at *4 n.1.

2. Tucson Lacks Evidence of "Lost Time" Attributable to Defendants' Actionable Conduct.

Even assuming "lost time" damages were cognizable under Arizona law, Tucson fails to make the requisite showing to recover such damages. First, Tucson alleges that its estimated "lost time" is compensable because it prevented the employees from "perform[ing] their official functions." Tucson Opp. 8. But Tucson does not explain how each employee's time was spent, why those activities (which presumably involve classroom management and discipline) fell outside of their "official functions," or what "official functions" those employees were prevented from performing.

Moreover, Tucson has failed to provide evidence that any of the time allegedly "lost" was spent on issues related specifically to Defendants' platforms. For example, Tucson relies on time estimates provided by Dr. Sabrina Salmon, the Senior Director of Exceptional Education, Tucson Opp. 9, but ignores her admission that these percentages included time her staff spend addressing "*whatever mental health concern or counseling that a student has*"—regardless of any connection to

Defendants' platforms. *See* Tucson Opp. Ex. 19 (ECF No. 2369-20) (Salmon Dep.) 154:8–155:15 (emphasis added). Tucson also cites to a list of staff positions that were purportedly "impacted by Defendants' conduct," Tucson Opp. 8–9, but Ms. Shivanonda admitted that list of staff positions included *any* school personnel that "would be somehow connected in supporting the overarching whole child needs of all of our students," even without any connection to Defendants' platforms or actionable conduct. Tucson Opp. Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 62:24–65:23. Finally, Tucson cites Mr. Lambert's estimates of the time principals and assistant principals spent addressing issues somehow related to social media. Tucson Opp. 9. But Mr. Lambert did not explain how that time was spent or its consequences, and he admitted that he did not review any discipline reports, prior analyses, interviews, or surveys to reach his estimates, which he called a "ballpark number." Tucson Opp. Ex. 21 (ECF No. 2369-22) (July 1, 2025 Lambert Dep.) 16:4–20:23; *see also id.* Ex. 15 (ECF No. 2369-16) (June 24, 2025 Hammel Dep.) 168:21–171:14 (same, regarding Holly Hammel's time estimates).[10]

Tucson also fails to show that its unsupported, speculative, and overly broad estimates of "lost time" constitute admissible evidence as required to survive summary judgment. *See Gilmore v. Cohen*, 386 P.2d 81, 82 (Ariz. 1963) (plaintiff bears the burden of "show[ing] amount of their damages with reasonable certainty"); *Harris Cattle Co. v. Paradise Motors, Inc.*, 448 P.2d 866, 868 (Ariz. 1968) ("[T]he testimony establishing the loss must be free of speculation and conjecture."). Tucson's cited cases, Tucson Opp. 10, are not to the contrary. The only case Tucson cites involving lost time, *Ader v. SimonMed Imaging Inc.*, 465 F. Supp. 3d 953 (D. Ariz. 2020), is inapposite: there, individual employees testified regarding the total number of hours that *they themselves* worked, and that testimony was corroborated by their timesheets and other contemporaneous documentation. *Id.* at 966–68. Indeed, *Ader* recognized that another court rejected a comparable lost time claim where, like here, "no time records existed to corroborate the plaintiff's estimates." *Id.* at 968 (discussing

[10] Tucson's damages estimates suffer myriad other fatal defects, including that affiants offered estimates for years they did not work in the District, positions they did not supervise, schools that were not comparable to those they observed, and time spent addressing harms caused by non-actionable or unrelated conduct. Mot. 28–32. Tucson ignores these arguments entirely.

Holaway v. Stratasys, Inc., 771 F.3d 1057 (8th Cir. 2014)); *see also Gilmore*, 386 P.2d at 83 (rejecting damages claim because "[n]o books of account or other record of the costs . . . were introduced"). Tucson's remaining cited cases are likewise inapposite because they also involved direct evidence of specific damages. *See Oliver v. Henry*, 260 P.3d 314, 315 (Ariz. Ct. App. 2011) (appraisal expert opined on value car lost due to collision); *A. Miner Contracting, Inc. v. Toho-Tolani Cnty. Imp. Dist.*, 311 P.3d 1062, 1073 (Ariz. Ct. App. 2013) (plaintiff "submitted a detailed list and explanation of its actual damages"). By contrast, Tucson failed to submit the evidence needed to substantiate its requested damages.

3. Tucson Lacks Evidence of Out-of-Pocket Expenses Caused by Defendants' Actionable Conduct.

Tucson does not even try to contend that its out-of-pocket costs were incurred as a result of Defendants' *actionable* conduct or that it has made any attempt to separate out costs attributable to third-party content or protected features. Nor does Tucson dispute the evidence cited in Defendants' motion that each claimed item of costs serves numerous functions beyond Defendants' platforms. Tucson Mot. 33–35. Instead, Tucson conclusorily asserts that these expenditures were "necessitated by Defendants' conduct," Tucson Opp. 11, but it lacks evidence to support that claim.

Interrogatory Responses. Tucson cannot rely on its interrogatory responses to create a genuine dispute. Courts regularly refuse to consider inadmissible interrogatory responses at summary judgment. *In re Cathode Ray Tube Antitrust Litig.*, 2017 WL 11237000, at *4 (N.D. Cal. Mar. 9, 2017) (refusing to consider responses verified "on information and belief, not personal knowledge"); *Miller v. Int'l Bus. Machines Corp.*, 2007 WL 1148996, at *2 (N.D. Cal. Apr. 18, 2007) (declining to consider responses that were hearsay).[11] Tucson's General Counsel verified these responses, but his verification admitted the responses "are not all necessarily within my personal knowledge, or within the personal knowledge of any single individual." Tucson Opp. Ex. 16 (ECF No. 2369-17) (Tucson's Interrogatory Responses) 6. He likewise admitted at deposition that he did

[11] Tucson's only cited case concerned whether an expert may rely on inadmissible hearsay in interrogatory responses in forming their opinion, not whether inadmissible responses could create a genuine dispute. *See Correct Transmission, LLC v. Nokia of Am. Corp.*, 2024 WL 1289821, at *5 (E.D. Tex. Mar. 26, 2024).

not draft the responses, did not rely on any personal knowledge in verifying them, and did not personally review any underlying data. *Id.* Ex. 25 (ECF No. 2369-26) (Ross Dep.) 14:9–15:12, 44:4–25. Accordingly, the responses are not admissible evidence.

Yondr Pouches. Tucson relies solely on inadmissible testimony from its General Counsel that the District purchased Yondr because of "student use of social media." Tucson Opp. 11. But he admitted that Tucson does not have any data about the amount of time students spend on Defendants' platforms as opposed to other applications on their phones, Tucson Opp. Ex. 25 (ECF No. 2369-26) (Ross Dep.) 43:6–12, and Tucson's own documents show that it used Yondr to prevent students from using apps *other than* Defendants' platforms and from engaging in behaviors that could be done "via text message" such as "meeting up with friends," or "ordering food." *See id.* Ex. 4 (ECF No. 2369-5) (April 8, 2025 Shivanonda 30(b)(6) Dep.) 148:1–151:25.

Cellphone Lockers. Tucson relies on testimony from its General Counsel as to the purchase of cellphone lockers, but again, he admitted that Tucson lacked data about what students actually do on their phones. Tucson Opp. Ex. 25 (ECF No. 2369-26) (Ross Dep.) 43:6–12. Tucson also cites a declaration from a regional assistant superintendent, but the declaration does not attribute the expense to Defendants in particular. Tucson Opp. 11; *id.* Ex. 10 (ECF No. 2369-11) (Hammel Decl.) ¶ 12.

Character Strong and Talkspace. Tucson suggests expenses for the Character Strong and Talkspace programs were caused by Defendants because they relate to mental health and Defendants' platforms allegedly harm mental health. Tucson Opp. 11. Such "'conjecture or speculation' cannot provide the basis for an award of damages" and does not show the amount of damages with reasonable certainty. *See Gilmore*, 386 P.2d at 82.

Additional Personnel. Tucson argues that "the district needs more counselors, support staff, and site administrators," Tucson Opp. 12, but it does not dispute that it has not identified *any* specific job positions it alleges were created because of Defendants' platforms, *see* Tucson Mot. 33. While Tucson now claims that the "inability to hire needed personnel . . . is itself a compensable harm," this is an entirely new theory without support in the record. For instance, Tucson has no evidence of what staff it needed to, but could not, hire in the past as a result of Defendants' platforms, or the amount of resulting damage.

Property Damage. Tucson abandons any claims for repairing property damage allegedly caused by social media challenges. *See* Mot. 36 (arguing that Tucson cannot recover property damage resulting from third-party acts); Om. Opp. 195–199 (not claiming property damage among Tucson's "hard costs"); Tucson Opp. 11–12 (not listing property damage as an "additional cost").

D. Tucson Cannot Recover the Hoover Plan As Future Damages.

The Arizona case cited by the District in the Omnibus Opposition (at 205) confirms that future damages are not available as a matter of law for the alleged "future injuries" that Tucson claims it will suffer. Om. Opp. 206. That case makes clear that a plaintiff may seek expenses for reasonably certain future medical treatment for a *past injury* but says nothing about allowing payments for injuries that have not yet occurred. *Saide v. Stanton*, 659 P.2d 35, 36 (Ariz. 1983).

Even if future damages were available as a matter of law, as demonstrated in the Omnibus Reply (Section II.C.2), Tucson has no evidence that it is reasonably certain to incur over $1 billion in future expenses over the next 15 years because of alleged past injuries from Defendants' actionable conduct. *Gilmore*, 386 P.2d at 82. Contrary to Tucson's suggestion, Om. Opp. 206–07, this heightened requirement applies to all forms of future damages, not just lost profits. *See, e.g.*, *DeStories v. City of Phoenix*, 744 P.2d 705, 707–09 (Ariz. Ct. App. 1987) (future medical expenses); *Allen v. Devereaux*, 426 P.2d 659, 662 (Ariz. Ct. App. 1967) (future pain and suffering damages); *see also Saide*, 659 P.2d at 36 (plaintiff must show that the "need for future care" is "reasonably probable and there must be some evidence of the probable nature and cost of the future treatment").

Tucson has no evidence of what level of alleged mental health harms its students will experience over the next 15 years (either as a result of Defendants' actionable conduct or otherwise)—let alone how those harms will affect its finances. There is no expert testimony specific to Tucson, no testimony linking alleged future expenditures to Defendants' actionable conduct, and no testimony considering the effect of future changes to Defendants' platforms. Tucson relies entirely on Dr. Hoover's opinions, but her opinions are virtually the same for every District and are entirely speculative as to what future expenses will be needed. *See* Tucson Mot. 43–44; *Gilmore*, 386 P.2d at 82 ("'conjecture or speculation' cannot provide the basis for an award of damages"). They are based on *nationwide* staffing recommendations that Tucson has long failed to meet for

reasons that have nothing to do with Defendants' platforms. *See* Tucson Opp. Ex. 1 (ECF No. 2369-2) (Trujillo Dep.) 134:20–136:15, 138:19–139:14 (Tucson has had a ratio of 500:1 students to counselors since at least 2018 "due to budgetary constraints"); *id.* Ex. 19 (ECF No. 2369-20) (Salmon Dep.) 220:13–221:19 ("shortages of psychologists" have been "consistent" due to "national trends" such as fewer individuals choosing to become psychologists).

E. The Hoover Plan Is Not a Proper Abatement Remedy Under Arizona Law.

For the reasons explained in the Omnibus Reply, the Districts cannot recover their strategic plans as an abatement remedy because (1) they have an adequate remedy at law and (2) the plans are not tailored to the alleged consequences of Defendants' conduct. But even if Tucson cleared those hurdles, it cannot show an award of money is proper abatement under Arizona law.

Tucson proves Defendants' point: "abatement encompasses removing or remedying the source of harm," Tucson Opp. 13, and the cases Tucson cites confirm that in Arizona, abatement is limited to an injunction requiring the defendant to terminate the conduct interfering with the relevant public right. *See Cactus Corp. v. State ex rel. Murphy*, 480 P.2d 375, 378–79 (Ariz. Ct. App. 1971) (enjoining future exhibitions of obscene film); *Brown v. City of Phoenix*, 557 P.3d 321, 329–30 (Ariz. Ct. App. 2024) (injunction required city to remove unlawful tents); *Brandes v. Mitterling*, 196 P.2d 464, 465 (Ariz. 1948) (plaintiffs sought injunction "to terminate the use of [a] field as an airport").[12] Contrary to Arizona law, the Hoover Plan does not recommend that Defendants do or refrain from doing anything regarding their platforms. Mot. 39–40.

III. CONCLUSION

The Court should grant Defendants' motion for summary judgment or, in the alternative, partial summary judgment.

[12] Tucson's citation to *City of Safford v. Seale*, 2009 WL 3390172, at *2 (Ariz. Ct. App. Oct. 21, 2009), is wholly inapt. *See* Om. Opp. 214. There, a court authorized a city to abate the unsafe condition caused by a contaminated residence through "razing and removal" of the house. *Id.* at *2. The house's owner objected under a state law that entitled her to "notice, right to appeal, and opportunity to remediate" the unsafe conditions before abatement could be ordered against her property. *Id.* Nothing in this case supports Tucson's claim that an abatement remedy can order a defendant to fund the plaintiff's "remediation" of harms allegedly caused by a public nuisance.

DATED: December 5, 2025

Respectfully submitted,

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ATTESTATION PURSUANT TO CASE MANAGEMENT ORDER 27

I attest that the evidence cited herein fairly and accurately supports the facts as asserted.

DATED: December 5, 2025

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ATTESTATION

I, Victoria A. Degtyareva, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: December 5, 2025

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